

REMARKS

This Application has been carefully reviewed in light of the Final Office Action mailed August 23, 2005 and the Advisory Action mailed December 28, 2005. At the time of the Final Office Action, the claims were rejected as follows:

- Claims 22-39 were rejected under the non-statutory judicially-created doctrine of double patenting in view of *Frye* (US 6,742,517); *Andonian* (US 5,357,758); *Todd, Jr.* (US 6,446,630); and *Leonard* (US 4,211,086). (Of these references, only *Frye* is commonly owned with the present application.)
- Claims 40-66 were rejected under 35 U.S.C. § 103(a) as being obvious in view of *Andonian* and *Leonard*.

In response to the Final Office Action, Applicants filed a Response to Final Office Action on November 23, 2005, including a Terminal Disclaimer regarding *Frye* (US 6,742,517) to overcome the double patenting rejections of Claims 22-39, and arguments regarding the rejections of Claims 40-66 under Section 103. On December 21, 2005, Attorney for Applicants received a call from Ms. Jan Hurley at the Patent Office indicating that the Terminal Disclaimer had been misplaced by the Patent Office, and requesting a new copy. A new copy of the Terminal Disclaimer was faxed to Ms. Hurley on December 21. However, the Advisory Action was apparently prepared without possession of the Terminal Disclaimer, as Examiner Patel rejected all pending claims 22-66, including Claims 22-35 and 37-39 that should have been allowed in light of the Terminal Disclaimer.

Attorney for Applicants spoke with Examiner Henry Bennett on January 19, 2006 regarding this situation. Examiner Bennett indicated that Claims 22-35 and 37-39 would be allowed in view of the Terminal Disclaimer, which should now be present in the Patent Office file for this application. Applicants attach hereto another copy of the Terminal Disclaimer. Applicants also enclose a copy of the check evidencing payment of the Terminal Disclaimer.

Applicants cancel Claims 40-66 without prejudice or disclaimer. Claims 1-21 were previously canceled, and Claim 36 was canceled in the Response to Final Office Action filed November 23, 2005. Therefore, Applicants respectfully request allowance of all pending Claims 22-35 and 37-39.

CONCLUSION

Applicants have made an earnest effort to place this case in condition for allowance in light of the amendments and remarks set forth above. Applicants respectfully request allowance of Claims 22-35 and 37-39.

Applicants enclose herewith a Petition for a Two-Month Extension of Time, along with a check in the amount of \$450.00 for the extension fee. Applicants believe there are no additional fees due at this time; however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2689.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorney for Applicants



Eric M. Grabski
Reg. No. 51,749

Date: January 20, 2006

SEND CORRESPONDENCE TO:
BAKER BOTTS L.L.P.
CUSTOMER ACCOUNT NO. **31625**
512.322.2689
512.322.8383 (fax)

Attachment: Terminal Disclaimer

**TERMINAL DISCLAIMER TO OBIATE A DOUBLE PATENTING
REJECTION OVER A "PRIOR" PATENT**

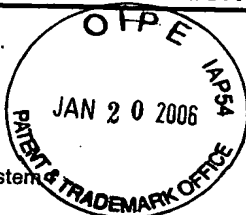
Docket Number (Optional)
076041.0155

In re Application of: Mark R. Frye et al.

Application No.: 10/658,793

Filed: September 10, 2003

For: High Efficiency Liquid Oxygen System



The owner*, Mallinckrodt, Inc., of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term prior patent No. 6,742,517 as the term of said prior patent is defined in 35 U.S.C. 154 and 173, and as the term of said prior patent is presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of the term of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the prior patent, "as the term of said prior patent is presently shortened by any terminal disclaimer," in the event that said prior patent later:

- expires for failure to pay a maintenance fee;
- is held unenforceable;
- is found invalid by a court of competent jurisdiction;
- is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321;
- has all claims canceled by a reexamination certificate;
- is reissued; or
- is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1. ☒ For submissions on behalf of a business/organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the business/organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☐ The undersigned is an attorney or agent of record. Reg. No. _____

Joseph A. Uradnik
Signature

11-07-05
Date

JOSEPH A. URADNIK

Typed or printed name

925-463-4385
Telephone Number

- ☒ Terminal disclaimer fee under 37 CFR 1.20(d) included.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).
Form PTO/SB/96 may be used for making this certification. See MPEP § 324.

This collection of information is required by 37 CFR 1.321. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

STATEMENT UNDER 37 CFR 3.73(b)Applicant/Patent Owner: Mark R. Frye et al.Application No./Patent No.: 10/658,793Filed/Issue Date: September 10, 2003Entitled: High Efficiency Liquid Oxygen SystemMallinckrodt Inc.
(Name of Assignee)corporation

(Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. ☒ the assignee of the entire right, title, and interest; or
2. ☐ an assignee of less than the entire right, title and interest.
The extent (by percentage) of its ownership interest is _____ %

in the patent application/patent identified above by virtue of either:

- A. ☒ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel 011612, Frame 0479, or for which a copy thereof is attached.

OR

- B. ☐ A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as shown below:

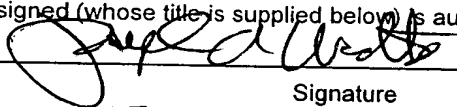
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☐ Additional documents in the chain of title are listed on a supplemental sheet.

☐ Copies of assignments or other documents in the chain of title are attached.

[NOTE: A separate copy (i.e., a true copy of the original assignment document(s)) must be submitted to Assignment Division in accordance with 37 CFR Part 3, if the assignment is to be recorded in the records of the USPTO. See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.



Signature

JOSEPH A. URADNIK

Printed or Typed Name

ASST. SECRETARY

Title

11-07-05

Date

925-463-4385

Telephone Number

This collection of information is required by 37 CFR 3.73(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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BAKER BOTTS L.L.P.
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 Austin, Texas 78701-4039

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